

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

UNITED STATES OF AMERICA)
)
v.) No. 3:08-CR-107
) (Phillips/Inman)
RALPH T. O'NEAL)

MEMORANDUM AND ORDER

On February 19, 2013, the Honorable Dennis H. Inman, United States Magistrate Judge, filed a Report and Recommendation (R&R) [Doc. 503] in which he recommended that (1) defendant's *pro se* motion for appointment of an attorney to assist him with the filing of a § 2255 motion be denied; and (2) attorney Robert Vogel's motion to be appointed to represent defendant with respect to defendant's motion for new trial be granted.

This matter is presently before the court on the government's timely objections to the R&R [Doc. 504]. The government objects only to (a) the suggestion that counsel's pending motion for new trial may be meritorious and (b) any future attempts by counsel to seek reimbursement for filing a meritless motion. However, the government does not object to counsel's appointment "if he is willing to represent defendant *pro bono*, without any expectation or guarantee of payment."

The defendant has responded to the government's objections [Doc. 505] asking that the government's objections that merely reargue the merits of defendant's motion for new trial are unresponsive and should be stricken from the record. Then, defense counsel proceeds to reargue the points he set forth in the motion for new trial, so the court finds defendant's request to strike portions of the government's objections without merit.

Irrespective of the merits of defendant's motion for new trial, having reviewed the record and the briefs of the parties, the court is not persuaded that the Magistrate Judge erred in his recommendation that counsel be appointed to represent defendant in filing his motion for new trial. Therefore, the government's objections to the R&R [Doc. 504] are hereby **OVERRULED**, whereby the R&R [Doc. 503] is **ACCEPTED IN WHOLE**. Accordingly, defendant's motion for appointment of counsel to file a motion for new trial [Doc. 499] is **GRANTED**, and defendant's *pro se* motion for appointment of counsel to assist him with the filing of a § 2255 motion [Doc. 493] is **DENIED**.

IT IS SO ORDERED.

ENTER:

s/ Thomas W. Phillips

United States District Judge